

JEREMIAH FEURT
Claimant
VS.
MCELHANEY FENCE COMPANY
Respondent
AND
CINCINNATI INSURANCE COMPANY
Insurance Carrier

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Respondent appeals the March 6, 2003 Award of Administrative Law Judge Brad E. Avery. Claimant was granted benefits after the Administrative Law Judge determined that claimant had suffered accidental injury arising out of and in the course of his employment with respondent. The Appeals Board (Board) heard oral argument on August 15, 2003.

Claimant appeared by his attorney, Timothy G. Riling of Lawrence, Kansas. Respondent and its insurance carrier appeared by their attorney, Matthew S. Weaver of Overland Park, Kansas.

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge.

- (1) Did claimant suffer accidental injury arising out of and in the course of his employment with respondent?
- (2) What is nature and extent of claimant's injury and disability?
- (3) Is claimant entitled to the payment of outstanding medical expenses incurred after his employment with respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

The Award sets out findings of fact and conclusions of law and it is not necessary to repeat those herein. The Board adopts those findings and conclusions as its own as though fully set forth herein.

Respondent contends claimant did not prove that he suffered accidental injury arising out of and in the course of his employment when he developed bilateral carpal tunnel syndrome. Claimant's duties as a fence builder and laborer included digging post holes, pouring concrete, using a nail gun, picking up pickets, hammering nails, scooping dirt and sawing. He also loaded and unloaded supplies off of the trucks. The activities described by claimant are hand intensive.

Claimant was examined and treated by board certified orthopedic surgeon Neil Lintecum, M.D. Dr. Lintecum opined that claimant had suffered accidental injury as a result of the physical activities performed while working for respondent. Respondent provides no alternative explanation for claimant's symptoms. The Board finds that claimant did prove that he suffered accidental injury arising out of and in the course of his employment.

With regard to the nature and extent of claimant's injury, there are two opinions in the record regarding claimant's functional impairment. Dr. Lintecum, the treating physician, opined that claimant had no permanent impairment as a result of the bilateral carpal tunnel condition and resulting surgeries. Claimant was, however, referred to Peter V. Bieri, M.D., board certified in disability evaluations, by the Administrative Law Judge for an independent medical examination. Dr. Bieri, who also found that claimant suffered accidental injury as a result of his work activities with respondent, opined that pursuant to the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.), claimant had a permanent functional impairment of 9 percent to the body as a whole. The Board notes that Dr. Lintecum, while he stated that his opinion was based upon the *Guides*, ultimately agreed that he was not sure which version of the *Guides*, either the Third or the Fourth Edition, he used in reaching this opinion. Dr. Lintecum also testified that he did not believe it necessary to refer to the *Guides*, as, in his opinion, claimant had no impairment and, therefore, the *Guides* were unnecessary.

The Board finds that as K.S.A. 44-510e (Furse 1993) mandates that the AMA *Guides* (4th ed.) be utilized when determining functional impairment, that the opinion of Dr. Bieri, which complies with the statute, is the most credible. The Board, therefore, affirms the Administrative Law Judge's determination that claimant has a 9 percent impairment to the body as a whole.

The final issue to be determined is whether the medical expenses incurred by claimant with Dr. Lintecum after his initial treatment were related to his original injury or were related to a new injury suffered by claimant with a separate employer. It is significant that claimant experienced ongoing symptoms in his hands after his surgeries. In particular, claimant's inability to make a three signal--i.e., holding up three fingers--appeared to be an ongoing problem. He also had difficulty extending his ring finger and had ongoing symptoms of pain, at least in his left palm. The tests performed by Dr. Lintecum, which are in dispute, appear to be tests intended to discover why claimant was experiencing ongoing difficulties. K.S.A. 44-510h (Furse 1993) makes it the duty of the employer to provide services of a health care provider "as may be reasonably necessary to cure and relieve the employee from the effects of the injury."

The Board finds the follow-up treatment provided by Dr. Lintecum, including the MRI, were tests designated to relieve claimant of the symptoms of his injuries and are, therefore, a part of the ongoing treatment for claimant's bilateral carpal tunnel syndrome. The Board, therefore, affirms the Administrative Law Judge's determination that those bills are authorized and part of claimant's treatment and are ordered paid as such.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Brad E. Avery dated March 6, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Timothy G. Riling, Attorney for Claimant
Matthew S. Weaver, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Director